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**WRITTEN COMMENTS
OF THE NATIONAL ASSOCIATION OF
CONSUMER AGENCY ADMINISTRATORS
BEFORE THE
UNITED STATES FEDERAL TRADE COMMISSION
REGARDING THE TRADE REGULATION RULE
ON FUNERAL INDUSTRY PRACTICE
("FUNERAL RULE")**

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The National Association of Consumer Agency Administrators ("NACAA") appreciates the opportunity to comment on the Funeral Rule and its importance to consumers. NACAA supports public agencies responsible for ensuring a fair and informed marketplace and representing the interests of consumers. NACAA is a nonprofit association representing approximately 165 consumer agencies at all levels of government in the United States and other countries.

NACAA member agencies across the country receive consumer complaints and inquiries about a vast array of issues and concerns. NACAA is supported by, and works with, various state and federal regulatory and enforcement agencies who assist in creating a fair but competitive marketplace for consumers and industries. It is from this perspective that NACAA offers the following comments for consideration by the Commission in reviewing the Funeral Rule.

The initial questions posed are whether there is a continuing need for the Funeral Rule and what, if any, benefits consumers receive from this Rule. NACAA asserts that there is a definite need for the Rule and that it has and will continue to be highly beneficial to consumers.

The obvious benefit for the Funeral Rule is that it enables comparison shopping by consumers. Assuming that funeral homes in a given area comply with the Rule and have prepared and supply consumers with the appropriate price lists, consumers may theoretically obtain this information from more than one funeral home and make informed decisions relating to the costs of necessary services and goods. The true benefit, however, of the Rule extends far beyond creating a competitive industry through comparison shopping.

In most circumstances, consumers purchase funeral goods and services on an at need basis and many are unaware of the prices associated with purchasing these goods and services. This is

especially true in rural areas where competition is minimal. The information required by the Funeral Rule at least permits consumers to know what they are paying for and provides information they can review at the time they are making these difficult decisions and later. Absent these requirements, the already increasing prices could skyrocket with little or no explanation to consumers.

NACAA believes that the Rule also offers benefits to industry members who are competing on a day-to-day basis because the Rule requires basic economic information to be provided to consumers. This information, in turn, permits consumers to seek alternative arrangements and/or more affordable goods and services. These benefits, it is believed, have been derived with very little cost to consumers or the industry. Under the Rule, industry members are required to do little more than service providers in other industries and the benefit to consumers is, in many cases, invaluable.

NACAA supports an expansion of the definition of "funeral provider" to bring non-traditional members of the funeral industry within the scope of the Funeral Rule's coverage. These industry newcomers often advertise the cost of their products or services as significantly lower than those that may be purchased from traditional providers. Asking these companies to provide documents supporting their advertising claims presents minimal burden and can only serve to provide additional useful information to consumers. Third party retailers (especially casket sellers) are rapidly increasing their presence in the industry and offer consumers an opportunity to purchase goods at a significantly lower cost. The true out-of-pocket expense for the consumer, however, can only be estimated when full disclosure is made by all the entities involved in

planning and purchasing funeral services. The benefits of expanding the scope of the Rule, therefore, clearly outweigh any costs associated therewith.

NACAA also believes that the Funeral Rule should be expanded to require that the price sheet is available in a public area of the funeral home. Currently, funeral homes are required to give the list to anyone who asks, but it is often difficult to get the price list without sitting through a sales pitch from a funeral director.

NACAA is concerned that the non-declinable fee is being misused or miscommunicated to consumers. There is some concern that this fee may be used as a catch-all to recoup profits lost to competitors (*i.e.*, third party retailers) in providing some goods. While NACAA appreciates the services offered by providers and recognizes the appropriateness of reasonable charges for those services, allowing providers to make up the difference between the profits realized from selling a casket and charging only a non-declinable fee because a consumer has chosen to purchase a less expensive casket from another source seems to defeat the purpose. NACAA would support and encourage any efforts to close any loopholes present in either the non-declinable fee or the casket handling fee permitted under the Rule.

Because of the increase of third party casket sellers, the Funeral Rule was amended to prohibit a funeral home from charging a service charge to consumers who don't purchase their casket from the funeral home. However, many people are unaware that this rule exists and are coerced into purchasing a casket from the funeral home at a much more expensive price.

NACAA suggests that the General Price List include a disclosure summarizing the rule that prohibits service charges in a consumer friendly format.

NACAA also supports the Funeral and Memorial Societies of America in its request to add four items to the required itemization on the General Price List (GPL). These items are: the price for private viewing without embalming, the price for body donation to a medical school, the price for the cremation process itself, and the price for rental caskets. NACAA contends the proposed additions include items that many consumers are interested in purchasing and are being routinely offered by the industry. Again, requiring the addition of these items on the GPL will serve only to provide complete cost information to consumers at little additional cost to the industry.

Another issue specifically addressed in the comment request is the issue of pre-need arrangements and the need for regulation in this practice area. NACAA has seen a rise in the number of complaints related to pre-need contracts and additional costs assessed when these services are actually provided. There is an increasing concern by consumers and regulators that consumers are being charged additional amounts for services paid for under pre-need arrangements. The issue is not necessarily the placement of funds in trust accounts: rather the present concern centers around the unexplained increases in costs above and beyond the negotiated contract prices. NACAA recognizes that states may have adopted legislation relating to pre-need arrangements and contracts. These statutes will vary on a state-by-state basis. However, NACAA would support a review of these statutes relating to the assessment of additional costs at the end of the contract period or at the time the services are actually provided. This may be an area ripe for additional protection via the expansion of the Funeral Rule.

NACAA is aware of the recent criticisms and research regarding the enforcement of the Funeral Rule which could be incorrectly used to support a finding that the Funeral Rule is not

effective in providing consumer protection. NACAA appreciates the efforts made by the Federal Trade Commission and various State Attorneys General offices that have undertaken significant enforcement actions since the adoption of this Rule. NACAA is aware that several states have undertaken, with the assistance of the FTC, undercover sweeps to measure compliance and to enforce the Rule where necessary. These sweeps have taken place across the United States and have served as a continuing enforcement tool to the benefit of consumers. The FTC's involvement in investigator training and providing legal research and strategy has been extremely helpful to state regulators.

At a minimum, the results of these sweeps indicate that: (1) there is yet to be full compliance with the Funeral Rule, and (2) consumers are unlikely to complain about abuses in this area making undercover investigations essential in evaluating compliance. By way of example, in two cases investigated by a state attorney general with the assistance of the Federal Trade Commission, representations were made which indicate the level of pressure placed on consumers in this area. In one case, a funeral home applied a great deal of pressure on test shoppers to purchase a cemetery plot prior to discussing funeral service needs with them. In order to try to avoid discussion of cemetery plots, which was not part of the investigation, the test shoppers stated that their dying family member was a veteran and would be buried in a veterans' cemetery. The funeral home representative responded by saying that there were no veterans' lots or plots available in the immediate area and that the grave side service would have to take place in an area approximately two hours away if the family member was going to be buried in a veterans' cemetery. This was an absolutely false statement.

In another situation, the funeral director indicated that embalming was not required and that if the consumer chose not to have their loved one embalmed prior to burial, the provider could put the body in a bag and add perfume instead of embalming. Both of these examples emphasize the pressure placed on consumers to purchase unnecessary services and goods to the benefit of the funeral home.

The National Funeral Director Association's Funeral Rule Offenders Program has been successful in educating and providing information to funeral home directors, owners, and operators about the Rule. The FTC is to be congratulated for its creativity and responsiveness in working with the industry to achieve education of the industry about the requirements of the Rule.

However, in most state and local enforcement actions, it is the public nature of the action taken by the agency which causes the most change in any industry's behavior. Allowing funeral home service and good providers to, in effect, be counseled for violations of the Rule may lead some providers to believe that compliance is not taken seriously by enforcement agencies and consumers. As with most other industries, NACAA believes that the funeral industry will begin true policing of its own members when enforcement actions are public and consumers are aware of the lack of compliance in funeral homes in their area.

Given the changing nature of the industry, compliance with and enforcement of the Funeral Rule is becoming increasingly important. Mergers, acquisitions and national chains are becoming the norm rather than the exception in this area. Training, therefore, should be more consistent throughout any company, regardless of the number of homes it operates, and compliance should be easier to monitor both by the company and the government.

The value of the Funeral Rule comes down to the basic fact that consumers are making decisions at a highly emotional time and are vulnerable to the slightest pressure involving these purchase choices. They seek unique counseling from funeral service providers and count on them to understand their financial restrictions and emotional needs. All too often this service competes with the financial interests of a growing and profit-oriented industry. The Funeral Rule provides a minimum of information for consumers to review prior to making these most difficult and costly decisions. It should be expanded as needed to provide information to consumers and continually enforced by the Commission with the assistance of the States.

RESPECTFULLY SUBMITTED,

A handwritten signature in cursive script, reading "Larry R. Kaplan", followed by a horizontal line.

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